

REMARKS

Initially, the Examiner has restricted the application into two purportedly distinct inventions, namely Claims 1-20 drawn to a textile material, and Claims 21-26 drawn to a process of making a textile material. Applicant made a provisional election, with traverse, of Claims 1-20 on October 4, 2002, for which the Examiner has requested affirmation. Applicant herein affirms the election of Claims 1-20 for prosecution on the merits.

On a formal note, the Examiner has noted the use of direct references to the claims in the specification, and has made some suggestions regarding the arrangement of the specification in general. Applicant has amended the specification to remove the references to the claims, and to place the application in more appropriate format. Therefore, Applicant submits that the Examiner's objections to the specification have now been overcome.

The Examiner has also objected to Claims 1-20 based on the inclusion of the term "characterised," stating that the term denotes open language, such as the term "comprising." Applicant has amended those claims so as to clarify those claims.

Formally, the Examiner has rejected Claims 1-20 under 35 U.S.C. §112, second paragraph, based on the contention that they are indefinite for failing to particularly point out and distinctly claim the subject matter of the invention. The Examiner has noted a number of issues with the claims, most of which have been addressed in amendments above. The Examiner, however, has stated that (1) the use of the term "textile material" in the preamble of Claim 1 is confusing, and (2) the term "resistance to environmental

influences” in former Claim 10 is also confusing. Applicant will address those specific concerns below.

The Examiner states that it is his position that the preamble of Claim 1 is directed to a textile material, while the claim is directed to fibers or film with particles. Based on this interpretation, the Examiner has stated that it is not clear how a textile material can be claimed in the preamble, while fabric or fibrous materials are listed as alternatives in the claims. The Examiner appears to misunderstand the term “textile material.” The term textile material means a material that is used for clothing, or textile products. Thus, fabric, woven or knitted materials are all covered by the present claims, as well as film-like materials such as leather, and water-proof clothing made of PVC or PR film, for example. Thus, the listing of alternative materials such as fabric or fibrous materials is not contradictory, as those materials comprise merely a subset of materials that fit within the broad category of textiles.

As to the Examiner’s arguments about the use of “environmental influences” in former Claim 10 (now a part of Claim 1) are centered around the contention that the claim is not clear because it does not list any particular ranges of pressure, moisture or temperature. The Examiner appears to misunderstand the claim language. The importance of the claim limitations are that the particles react differently to environmental influences, such as changes in temperature, pressure or moisture levels. By doing so, different areas of the textile material will react and function differently in different environmental conditions. The particular range of temperature, pressure or moisture levels is not especially important, and in fact would not be instructive or helpful

in describing the invention. Instead, it is the fact that the particles react differently to environmental influences that is important.

Based on the above arguments, and on the above changes, Applicant submits that all formal issues with the claims have now been overcome.

Substantively, the Examiner has rejected Claims 1-15 under 35 U.S.C. §102(b), based on the contention that they are anticipated by U.S. Patent No. 5,232,769, issued to Yamato et al (Yamato '769). Applicant respectfully traverses the Examiner's contentions. Applicant has, however, amended Claim 1 to further clarify the invention. Specifically, Applicant has combined the limitations of Claim 1 and Claim 10 together, to provide a textile material that is not taught, disclosed or suggested by the prior art.

Yamato'769 describes microcapsules comprising a substance that acts to improve the physiological condition of human skin when adhered to a textile structure. The capsules, however, remain unbroken during periods of washing or processing. Instead, the capsules break slowly over time through wearing or through intentional friction against the fabric. (See Yamato'769, P. 4, Lines 60-65).

It is clear from this description that all of the particles react in the same way to the frictional application, or the wear application. For example, if excess friction is applied to the fabric in Yamato '769, all of the microcapsules react the same way.

The presently claimed invention thus clearly reads over Yamato '769. Claim 1 specifically recites that the textile material includes spherical particles that include a resistance to environmental influences, which resistance can vary from particle to particle. Thus, if the textile material of the present invention were subjected to the same excess frictional application described above, the spherical particles would react

differently to the friction. For example, some particles may not react at all, while some react vigorously to the friction. Alternatively, the particles could react at different rates to the frictional application. The specifics are not essentially important, except that the textile material of the present invention has microcapsules that react differently to environmental influences.

Some further examples may be helpful. For example, if additional pressure is applied to the textile material of the present invention, additional active substance may be released from certain microcapsules, resulting in a low-friction characteristic for the material. Similarly, a temperature increase to the material could result in the release of anti-sweating agents in particular areas of the textile material. (See Page 8, Line 30 to Page 11, Line 11 of the specification).

Thus, based on at least the differing reactions of the spherical particles in the present invention to environmental influences, Applicant submits that the present claims are not anticipated by Yamato '769.

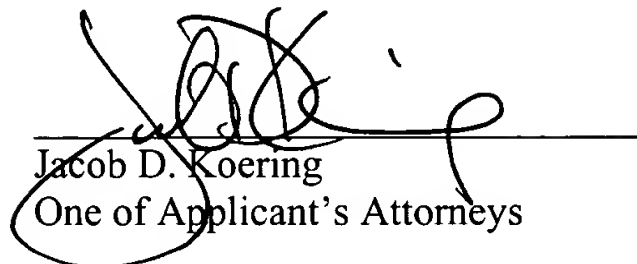
Based on the above, Applicant submits that Claim 1 is not taught, disclosed or suggested by any prior art reference, and should therefore now be in condition for allowance. Furthermore, the remaining claims in the application, namely Claims

Should anything further be required, a telephone call to the undersigned at (312)
226-1818 is respectfully solicited.

Respectfully submitted,

FACTOR & LAKE, LTD.

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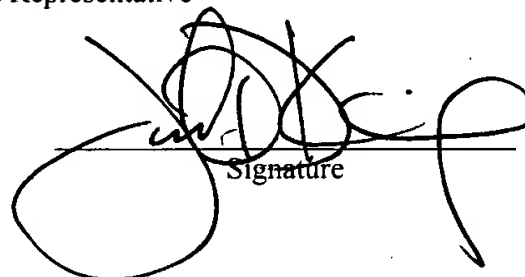

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I hereby certify that this correspondence is being deposited with the United States Patent Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on May 17, 2004.

Jacob D. Koering

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